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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/822,871  | 04/13/2004  | Robert J. Deleys     | BJS-2551-141        | 3673             |
| 23117 7590 05/21/2009<br>NIXON & VANDERHYE, PC<br>901 NORTH GLEBE ROAD, 11TH FLOOR<br>ARLINGTON, VA 22203 |             |                      |                     |                  |
| EXAMINER  |             |                      |                     |                  |
| BLUMEL, BENJAMIN P  |             |                      |                     |                  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |
| 1648  |             |                      |                     |                  |
| MAIL DATE   |             | DELIVERY MODE        |                     |                  |
| 05/21/2009  |             | PAPER                |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/822,871

**Applicant(s)**

DELEYS ET AL.

**Examiner**

BENJAMIN P. BLUMEL

**Art Unit**

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 55, 59, 60, 62, 68-76 and 81-93 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 55, 59, 60, 62, 68-73 and 81-89 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/13/04 & 8/18/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 07/920,286.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Applicants are informed that the rejections of the previous Office action not stated below have been withdrawn from consideration in view of the Applicant's arguments and/or amendments. Claims 55, 59, 60, 62, 68-73 and 81-89 are examined on the merits.

Applicant's request for a corrected filing receipt is being processed and will be addressed in turn.

#### ***Terminal Disclaimer***

The terminal disclaimers filed on May 11, 2009 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patents (5,910,404; 5,922,532; 6,872,520; 6,576,417; 6,287,761; and 6,007,982) have been reviewed and are accepted. The terminal disclaimers have been recorded.

#### ***Response to Arguments***

Applicants' arguments filed 2/3/09 have been fully considered but they are not persuasive. See responses below.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**(Prior Rejection Maintained)** Claims 55, 59, 60, 62, 68-73 and 81-89 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed

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invention. Claim 55 recites, "...consisting at least 5 to less than 20 amino acids..." for several different amino acid sequences; claims 71-73 recite, "...from amino acids 1-92...from amino acids 1688-1749... 2263-2330..."; and claims 77- 80 recite, "...other than amino acids 1 - 6..." however, there is no support in the specification for molecules based on such amino acid regions of any protein as recited in claims 71-73, nor fragments other than at least 5, 6, 8 or 12 amino acids in length, in the specification.

**Response to arguments:**

Applicants argue that since similar claim limitations have been confirmed to have support by the Patent Office in previous patent applications, they therefore have support for the presently claimed invention.

In response, the Office acknowledges that similar claim recitations have been permitted in issued patents. However, the merits of the rejection have not been adequately addressed by Applicant in this application. The question remains as to the location of support for the claimed embodiments in the specification as originally filed. Applicant has not pointed out exactly where support for the embodiments is to be found in this application as originally filed, or in any parent application as originally filed.

Therefore, the rejection is maintained for reasons of record.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the

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international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**(Prior Rejection Maintained)** Claims 55, 59, 60, 62, 68-73 and 81-89 are rejected under 35 U.S.C. 102(c) as anticipated by Houghton et al. (US 5,350,671)

**Response to arguments:**

Applicants argue that since the Patent Office previously confirmed in prior patent applications that Houghton et al. fails to teach the instant invention, the rejection should be withdrawn.

In response, applicants' arguments are not found persuasive. Applicants have not stated in their response why Houghton et al. does not anticipate the instant invention. Therefore, the rejection is maintained for reasons of record because the merits of the rejection have not been adequately addressed by Applicant.

***Conclusion***

No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to BENJAMIN P. BLUMEL whose telephone number is (571)272-4960. The examiner can normally be reached on M-F, 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Nickol can be reached on 571-272-1600. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stacy B Chen/  
Primary Examiner, Art Unit 1648

/BENJAMIN P BLUMEL/  
Examiner  
Art Unit 1648